APPEAL NO. 010154

Following a contested case hearing held on December 14, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the compensable injury sustained by the respondent (claimant) on _____, does extend to the cervical area.

The appellant (carrier) has appealed, arguing that the decision is against the great weight of the credible evidence. The claimant responds by noting that the hearing officer is the sole judge of the relevance and materiality of the evidence offered and the credibility to be given to the evidence.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in her determination that the compensable injury sustained by the claimant on _____, extends to the cervical area. The hearing officer made it clear that the claimant appeared credible and that after the accident of _____, the claimant experienced pain from her head to her back, including her neck; and she also experienced pain in her fingers. The claimant's complaints of pain have continued. The medical records show the claimant as having been diagnosed with mild posterior protrusions at C3-4, C4-5, and C5-6, and C5 and C6 nerve root irritation. The claimant's treating doctor has opined that the claimant injured her cervical spine at the time of the original compensable injury on _____.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). This is equally true regarding medical evidence. Campos, *supra*. An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not

substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge